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**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
**USA COMMERCIAL MORTGAGE COMPANY,**  
 Debtor.

Case Nos.:  
 BK-S-06-10725-LBR  
 BK-S-06-10726-LBR  
 BK-S-06-10727-LBR  
 BK-S-06-10728-LBR  
 BK-S-06-10729-LBR

In re:  
**USA CAPITAL REALTY ADVISORS, LLC,**

JOINTLY ADMINISTERED  
 Chapter 11 Cases

Debtor.

In re:  
**USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
 LLC,**

Judge Linda B. Riegle

Debtor.

In re:  
**USA CAPITAL FIRST TRUST DEED FUND, LLC,**

Debtor.

In re:  
**USA SECURITIES, LLC,**

Debtor.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

**USACM LIQUIDATING TRUST,**

Adversary No. 08-\_\_

Plaintiff,

**USACM LIQUIDATING  
 TRUST'S ORIGINAL  
 COMPLAINT**

v.

**JAMES CIOFFI ARCHITECT, CORPORATION**

Defendant.

Hearing Date: n/a  
 Hearing Time: n/a

1 Plaintiff, USACM Liquidating Trust (the “Trust”), as successor to USA Commercial  
 2 Mortgage Company, hereby complains as follows:

3                   **I.        NATURE OF THIS ACTION**

4                   1. In April 2006, USA Commercial Mortgage Company (“USACM”), USA Capital  
 5 Diversified Trust Deed Fund, LLC (“DTDF”), and certain related entities were forced to file for  
 6 bankruptcy protection as a result of the gross misconduct by certain insiders, namely Thomas A.  
 7 Hantges (“Hantges”) and Joseph D. Milanowski (“Milanowski”) (collectively, the “Culpable  
 8 Insiders”). Among other wrongful conduct, the Culpable Insiders systematically looted USACM  
 9 and DTDF to fund USA Investment Partners, LLC (“USAIP”), an entity that functioned as their  
 10 personal “piggy bank,” as well as other entities in which they stood to reap substantial personal  
 11 profits.

12                   2. In the aggregate, the Culpable Insiders misappropriated tens of millions of dollars  
 13 from USACM and DTDF in order: (a) to fund the negative cash flow operations of USAIP and its  
 14 vast network of affiliated entities; and (b) to pay USAIP’s obligations to third parties. In this  
 15 adversary proceeding, the Trust seeks to recover \$107,013.51 of funds misappropriated from  
 16 USACM and fraudulently transferred to Defendant.

17                   **II.        JURISDICTION / VENUE**

18                   3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§  
 19 157 and 1334(b) in that this action arises under, arises in, and/or relates to this bankruptcy case.

20                   4. This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (H), and (O).

21                   5. This is an adversary proceeding pursuant to Fed. R. Bankr. P. 7001.

1       6.     The Defendant is subject to personal jurisdiction in this Court.  
2       7.     This Court has venue over this proceeding pursuant to 28 U.S.C. § 1409(a).  
3  
4

### III. PARTIES

#### A. PLAINTIFF

6       8.     Plaintiff Trust was created pursuant to the Third Amended Joint Chapter 11 Plan of  
7 Reorganization (the “Joint Plan”) filed by USACM, DTDF, and three other debtors in Bankruptcy  
8 Case No. 06-10725 (Docket No. 1799). The Joint Plan was confirmed by the Bankruptcy Court on  
9 January 8, 2007, and became effective on March 12, 2007. The Joint Plan expressly retained  
10 USACM’s causes of action for enforcement by the Trust, pursuant to 11 U.S.C. § 1123(b)(3)(B).  
11 The Joint Plan also transferred certain causes of action belonging to USA Capital First Trust Deed  
12 Fund, LLC to the Trust. The Trust, therefore, has standing to bring this action against the  
13 Defendant. The Trust is a liquidating trust organized under Nevada law. The Trust’s beneficiaries  
14 are the holders of allowed unsecured claims against USACM. Geoffrey L. Berman serves as the  
15 trustee of the USACM Trust and may be served through undersigned counsel.  
16  
17

#### B. DEFENDANT

18       9.     Defendant, James Cioffi Architect Corporation (“Cioffi”), is a California corporation  
19 with its principal place of business in the State of California at 2121 E. Tahquitz Canyon Way, Suite  
20 3, Palm Springs, California 92262-7021. Defendant Cioffi can be served through its registered  
21 agent, David Baron, at 1900 E. Tahquitz Canyon Way, Palm Springs, California 92262.  
22  
23  
24  
25  
26

## **IV. FACTUAL ALLEGATIONS**

## A. BACKGROUND OF USACM AND ITS DEMISE

10. In April 2006, USACM and certain related companies collapsed due to the fraud perpetrated on them by Culpable Insiders. Beginning as early as 1997, the Culpable Insiders employed a pervasive “Ponzi”-like scheme that enabled them to loot and/or misappropriate tens of millions of dollars from USACM. As a result of these wrongful activities, USACM was insolvent at least as early as December 31, 2001, if not earlier. Eventually USACM (the “Debtor”) filed for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006 (the “Petition Date”).

11. USACM was a mortgage broker and loan servicing company whose primary business activities were: (a) “originating” short-term loans from investors to real estate developers; and (b) servicing the loans that it originated by collecting principal and interest from borrowers and distributing those payments to the investors. USACM earned revenue by charging various fees for these services, including origination, servicing, and extension fees, although these fees often went uncollected.

12. A significant portion of the fee revenues that USACM actually received was subsequently misappropriated by the Culpable Insiders. Specifically, the Culpable Insiders misappropriated USACM’s money to fund entities in which they held an indirect ownership interest through USA Investment Partners, LLC (“USAIP”), including time-share hotels, real estate development entities, and technology companies. The Culpable Insiders often earmarked USACM funds and used USAIP as a conduit for fraudulently transferring these funds to such entities. In other instances, the Culpable Insiders caused USACM to directly transfer funds to entities in which

1 USAIP and the Culpable Insiders had an interest. In the aggregate, the Culpable Insiders  
 2 misappropriated tens of millions of dollars from USACM to fund their outside business ventures.  
 3

4       13. It was completely adverse to USACM's interests for the Culpable Insiders to  
 5 misappropriate USACM's funds for the benefit of USAIP. USACM owed no obligation, and  
 6 received no benefit for the money provided to USAIP and/or on its behalf. The Culpable Insiders  
 7 did not charge and/or collect interest on any of these transfers of USACM's funds, thereby  
 8 precluding USACM from using this money in legitimate investments. In addition, the Culpable  
 9 Insiders rarely repaid transfers of USACM's funds for USAIP's benefit. In the aggregate, USACM  
 10 transferred at least \$58 million to USAIP to fund USAIP's investments and pay its obligations.<sup>1</sup>  
 11 Prior to the Petition Date, USAIP's obligation to repay USACM was undocumented and appeared  
 12 only as an enormous intercompany receivable to USACM. In at least some instances, the  
 13 Bankruptcy Court has already found that USACM did not receive reasonably equivalent value  
 14 when it transferred funds to USAIP in exchange for incremental increases to this intercompany  
 15 receivable. USAIP's failure to repay such transfers and its ultimate bankruptcy has prevented any  
 16 possibility of USACM fully recovering on such obligations.  
 17

18       14. In addition, the Culpable Insiders caused USACM to make scores of other payments  
 19 for which it received no benefit and for which it had no underlying obligation. Routinely, the  
 20 Culpable Insiders commingled USACM's operating funds with funds held in the USACM  
 21 Collections Trust Account and other funds to make regular interest and principal payments to  
 22 investors in non-performing loans. These payments were made to conceal delinquent and defaulted  
 23

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24       1<sup>1</sup> The \$58 million obligation is in part or in whole reflected in the note between USACM and USAIP dated May 15, 2006. The  
 25 Bankruptcy Court approved the note by order dated July 24, 2006.

1 loans from other USACM directors, officers, employees, shareholders, as well as the investors and  
 2 regulatory authorities. In turn, this induced existing investors to maintain or increase their  
 3 investments with USACM and enticed new investors to entrust their money to USACM, thereby  
 4 providing the Culpable Insiders with liquidity to fund their scheme, and thus, future sources of funds  
 5 to loot from USACM.

7       15. Ultimately, USACM lost millions of dollars by making principal and interest  
 8 payments on loan obligations that it did not owe on behalf of defaulting borrowers. USACM did  
 9 not receive any benefit from making these “pre-payments” of interest and principal. Rather, such  
 10 payments were expressly forbidden by Nevada law, including NRS 645B.250.

12       16. The Culpable Insiders also misappropriated USACM’s funds directly for their  
 13 personal benefit. USACM frequently made unsecured, interest-free “advances” directly to the  
 14 Culpable Insiders. In other instances, the Culpable Insiders misappropriated USACM funds to pay  
 15 for professional services rendered solely for the benefit of the Culpable Insiders and/or one of their  
 16 outside business ventures.

18       17. Ultimately, USACM lost tens of millions of dollars through the myriad of ways in  
 19 which the Culpable Insiders’ systematically misappropriated USACM funds.<sup>2</sup> Additionally, the  
 20 Culpable Insiders also systematically looted DTDF to fund USAIP and its affiliated entities.  
 21 Approximately \$55 million was taken from DTDF and sent to USAIP and related entities, either  
 22 directly or indirectly through two sham companies — 10-90, Inc. (“10-90”) and Mountain Vista,  
 23 Inc.

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26       2 A more detailed discussion of the fraudulent scheme leading to USACM’s demise and bankruptcy may be found in the USACM  
 Liquidating Trust’s Complaint Against Deloitte & Touche, LLP and Victoria Loob. See Docket No. 1 in Cause No. 2:08-cv-00461-  
 PMP-PAL, pending in the United States District Court, District of Nevada, Las Vegas Division.

1           **B. TRANSFERS FROM USACM TO DEFENDANT.**

2       18. On October 1, 2001, USAIP and Salvatore J. Reale (“Reale”) formed Happy Valley  
 3       LLC, a Nevada limited liability company, for the sole purpose of acquiring a lease interest in certain  
 4       property which prior to acquisition was being leased by the Bureau of Indian Affairs to Palm  
 5       Springs Marquis, LLC (the “PS Marquis Lease”). The operating agreement for Happy Valley LLC  
 6       specified that USAIP and Reale were responsible on 50/50 basis for payment of any operating costs  
 7       and expenses of Happy Valley LLC.  
 8

9       19. Upon information and belief, Defendant provided consulting and/or architectural  
 10      services in 2002 and 2003 in connection with the PS Marquis Lease. Under the Happy Valley LLC  
 11      operating agreement, USAIP and Salvatore Reale (“Reale”) were required to split the cost of  
 12      Defendant’s services equally between them. However, despite such agreement between USAIP  
 13      and Reale, the Culpable Insiders caused USACM to transfer \$214,027.02 from its operating account  
 14      to pay for Defendant’s services in connection with the PS Marquis Lease.  
 15

16       20. Specifically, from April 19, 2002 through June 11, 2003, the Culpable Insiders  
 17      caused USACM to issue the following checks from its operating account to Defendant (the  
 18      “Transfers”):  
 19

<b>Transfer</b>	<b>Amount</b>	<b>Date</b>	<b>Check No.</b>
1	\$ 11,035.00	April 19, 2002	10678
2	\$ 16,043.17	June 17, 2002	11187
3	\$ 9,836.99	August 5, 2002	11518
4	\$ 40,780.05	January 20, 2003	12880
5	\$ 27,683.11	March 11, 2003	14137
6	\$ 25,288.43	April 9, 2003	14347

7	\$ 48,667.14	May 5, 2003	14526
8	\$ 34,693.13	June 11, 2003	14872
<b>TOTAL</b>	<b>\$ 214,027.02</b>		

21. Upon information and belief, USACM was reimbursed by Reale for half of these costs. Accordingly, USACM ultimately transferred \$107,013.51 of its own funds to Defendant as payment for services performed on behalf of Happy Valley LLC and for which it received no benefit.

22. Upon information and belief, USACM had no legal interest and no obligation to pay Defendant in connection with the PS Marquis Lease. Moreover, USACM did not receive any benefit from transferring funds from its operating account to Defendant in connection with the PS Marquis Lease.

## **V. CAUSES OF ACTION**

**FIRST CAUSE OF ACTION  
(11 U.S.C. § 544 and NRS 112.180(1)(a))**

23. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

24. The Transfers each constitute a transfer of an interest of the Debtor in property.

25. The Transfers were made within the applicable four-year period under NRS 112.180(a)(1).

26. On the date of the Transfers, there were creditors with allowable unsecured claims who could have avoided the Transfers pursuant to Nevada state law.

27. The Culpable Insiders caused the Debtor to make the Transfers with the actual intent to hinder, delay, or defraud creditors of the Debtor.

28. Accordingly, the Transfers (a) are fraudulent under NRS 112.180(1)(a); and (b) may be recovered under NRS 112.220.

29. Pursuant to 11 U.S.C. § 544(b), the Trust asks the Court to avoid the Transfers under applicable state law.

**SECOND CAUSE OF ACTION  
(11 U.S.C. § 544 and NRS 112.180(1)(b))**

30. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

31. The Transfers each constitute a transfer of an interest of the Debtor in property.

32. The Transfers were made within the applicable four-year period under NRS 112.180(1)(b).

33. On the date of the Transfers and the Petition Date, there were creditors with allowable unsecured claims who could have avoided the Transfers pursuant to Nevada state law.

34. The Debtor received less than a reasonably equivalent value in exchange for the Transfers.

35. The Debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or the transaction.

36. The Debtor was engaged in business or a transaction or was about to engage in business or a transaction for which any property remaining with the Debtor was unreasonably small capital.

37. The Debtor intended to incur or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

38. Accordingly, the Transfers (a) are fraudulent under NRS 112.180(1)(b); and (b) may be recovered under NRS 112.220.

39. Pursuant to 11 U.S.C. § 544(b), the Trust asks the Court to avoid the Transfers under applicable state law.

**THIRD CAUSE OF ACTION  
(11 U.S.C. § 550(a) and NRS 112.220)**

40. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

41. The Transfers are avoidable under 11 U.S.C. §§ 544 (through NRS 112.180(1)(a) and NRS 112.180(1)(b)).

42. The Trust may recover the value of Transfers as an initial transferee pursuant to 11  
U.S.C. § 550(a)(1) and NRS 112.220.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, the Trust respectfully requests that the Court enter judgment as follows:

- (a) Avoiding each of the Transfers;
- (b) Directing Defendant to pay the value of the Transfers to the Trust;

- (c) Directing Defendant to pay to the Trust all pre-judgment and post-judgment interest on the Transfers at the maximum rate allowable by law and/or equity;
- (d) Directing Defendant to pay the Trust's costs of court; and
- (e) Awarding the Trust such other relief that this Court deems just and proper.

Dated: April 11, 2008.

## **DIAMOND MCCARTHY LLP**

## **LEWIS AND ROCA LLP**

By: /s/ Erin E. Jones

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